1 week. On the 31st March, 1967, the defendants filed further and better particulars pursuant to the plaintiffs' solicitors' letter of the 11th March, 1967, running to 15 pages. On the 7th April, 1967, the summons was again adjourned to the 21st April, 1967, and on that day by consent of the parties no order was made on the summons."

In view of what is stated by the trial judge, it seems to me to be incorrect to state that the defendants had not complied with several orders for particulars. The fourth ground of appeal is accordingly devoid of substance.

For the above reasons I would dismiss the appeal with costs.

Wee Chong Jin C.J. and **Tan Ah Tah F.J.** concurred.

Appeal dismissed.

Solicitors: *Drew & Napier; L. A. J. Smith.*

CHUA SEOK CHOO v. OOI CHUAN LOK

[O.C.J. (Ong Hock Sim J.) February 29, 1968]
[Penang — Divorce Petition No. 4 of 1967]

Family Law — Divorce — Desertion — Constructive — Conduct amounting to.

Where a spouse who has left the matrimonial home seeks divorce on the ground of constructive desertion, the conduct of the other spouse relied upon to prove the *factum* and *animus* need not amount to a matrimonial offence, but it must be of such grave and weighty character that the court can properly regard as equivalent to expulsion in fact. A solitary instance of assault when the petitioner was with child is not conduct of such grave and weighty character to make the respondent guilty of constructive desertion.

Case referred to:—

(1) *Buchler* v. *Buchler* [1947] P. 25.

DIVORCE PETITION.

David Choong for the petitioner.

Ong Hock Sim J. (delivering oral judgment): This petition is filed on the ground of desertion. The allegation is contained in one paragraph of the petition, that is, in paragraph 7 which reads:—

"That on the 16th day of November 1963 at No. 8 Trang Road Penang aforesaid the respondent beat the petitioner and the mother of the respondent scolded the petitioner. Life was made so unbearable for the petitioner who was then with child that the petitioner left No. 8 Trang Road Penang and returned to stay with the parents of the petitioner at No. 73 McCallum Street Penang."

In this case, it was the petitioner who left the matrimonial home and therefore to support the alleged desertion she must show that the husband had by his conduct compelled her to leave the matrimonial home. This is termed constructive desertion and for this it is necessary to prove both the *factum* and the *animus* on the part of the spouse charged. There must be expulsive conduct on the part of the respondent which impelled the petitioner to abandon the matrimonial home. As stated by Asquith L.J. in *Buchler* v. *Buchler*,(1) at page 45,

"Constructively, the deserter may be the party who remains behind, if that party has been guilty of conduct which justifies the other party in leaving. To afford such justification the conduct of the party staying on need not have amounted to a matrimonial offence, such as cruelty or adultery. But it must exceed in gravity such behaviour, vexatious and trying though it may be, as every spouse bargains to endure when accepting the other 'for better, for worse'. The ordinary wear and tear of conjugal life does not in itself suffice";

and at p. 47:—

"It may, no doubt be galling — or, in some sense of the word, humiliating — for a wife to find that the husband prefers the company of his men friends, his club, his newspaper, his games, his hobbies, or indeed his own society, to association with her, and a husband may have similar grievances regarding his wife. But this is what may be called the reasonable wear and tear of married life, and if it were a ground for divorce, a heavy toll would be levied on the institution of matrimony."

A mere wish or intention that the other spouse should leave is insufficient by itself to constitute desertion. The wish or intention must be accompanied by conduct which is of a grave and weighty character and which the court can properly regard as equivalent to expulsion in fact.

The sole instance of assault, when it is not disputed that the petitioner was 7 months' pregnant, in my view, is not of that grave and weighty character to justify the petitioner leaving.

Here it is alleged that there was assault but how grave is not disclosed in the petition. On the face of the petition, there is only this one solitary instance. It was not disclosed what form the beating took. The petitioner left the matrimonial home and it is clear she had no *animus revertendi*, that is, that she had no thought of returning and on her own admission she herself left her home without intending to return. It may be true and I have no reason to disbelieve the evidence that the respondent had paid nothing towards the maternity fees or towards the support or maintenance of his wife or child all these years but if the petitioner chooses to leave the matrimonial home, the obligation to maintain and support is not obligatory for the respondent. True he has made no attempt to call her back. Whether that was due to pride or that he wished to end the consortium, I am not able to say. I think the law does not place the obligation on him to call the petitioner home.

Beyond the one solitary instance of beating there was no evidence of other assaults and further no sufficient particulars are set out. I do not consider that this one beating, be it one of many other assaults, can amount to expulsive

conduct which would constructively make the respondent the deserter rather than the deserted.

In the circumstances I regret that the petition must be dismissed.

Petition dismissed.

Solicitors: *Lim, Lim & Co.*

VETHANAYAGAM v. KARUPPIAH & ORS.

[O.C.J. (Raja Azlan Shah J.) March 6, 1968]
[K.L. — Civil Suit No. 1494 of 1967]

Societies — Unlawful society — Right of member to restrain the violation of rules — Societies Act, 1966, s. 12(3) proviso.

Practice and Procedure — Injunction — Interim injunction — Breach of contract — Not capable of being specifically enforced — No injunction — Specific Relief (Malay States) Ordinance, 1950, s. 54 (f).

The plaintiff and the defendants were members of the local branch of the Malaysian Indian Congress. By operation of section 12 of the Societies Act, 1966, the local branch was deemed to be an unlawful society, as the parent body had failed to apply to the registrar for his approval of the local body within the time specified in section 12(3) of the Act.

At the annual general meeting of the local branch, the defendants were elected members of the branch committee. The plaintiff applied by motion for an interim injunction to restrain the defendants from violating the rules of the Constitution of the Malaysian Indian Congress, and from acting further as members of the branch committee until after the trial of the action. The issue before the court was whether it was proper to grant an interim injunction at the suit of a member of an unlawful society to restrain other members of that society from violating its rules.

Held, dismissing the motion: the Societies Act, 1966, having declared the local branch to be unlawful, no member of the branch could acquire any right which was capable of being specifically enforced. Section 54(f) of the Specific Relief (Malay States) Ordinance, 1950, prohibits the granting of an injunction to prevent the breach of a contract the performance of which would not be specifically enforced. The court could not, therefore, lend its aid to grant an injunction at the suit of the plaintiff, a member of the unlawful society to restrain the defendants from infringing the rules of the Constitution of the Malaysian Indian Congress.

Observations on the jurisdiction to grant an interim injunction.

Cases referred to:—

(1) *Surajmull Nagoremull* v. *Triton Insurance Co.* (1924), 52 I.A. 126; A.I.R. 1925 P.C. 83; [1925] M.W.N. 257.

(2) *Tharmalingam* v. *Sambanthan* [1961] M.L.J. 63, C.A.

(3) *Bishun Prashad* v. *Sashi Bhusan*, A.I.R. 1923 Pat. 133.

(4) *Harris* v. *Amery*, L.R. 1 C.P. 148.

(5) *Bhikaji Sabaji* v. *Bapu Saju* (1876-77), 1 I.L.R. Bom. 550.

(6) *Soh Hood Beng* v. *Khoo Chye Neo* (1897), 4 S.S.L.R. 115, C.A.

CIVIL SUIT.

Lim Kean Chye and *S. Kulasegaran* for the plaintiff.

Dato' Athi Nahappan for the defendants.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is a motion for an interim injunction restraining the defendants by themselves, their servants, and/or agents from infringing or violating the rules of the Constitution of the Malaysian Indian Congress and from acting any further as members of the branch committee of the Kampong Pandan Branch of the said Congress until after the trial of the action.

Dato' Athi Nahappan, on behalf of the defendants, invited this court to determine the motion on the pleading as it stands. He therefore contended that since the statement of claim does not plead illegality under the Societies Act, 1966, it does not avail the plaintiff to raise that point of law in this court. That proposition is not sustainable. It is the duty of this court to take the point even though the plaintiff had not pleaded it (see *Surajmull Nagoremull* v. *Triton Insurance Co.*).(1) At all events that point was raised and fully argued by both sides in the course of this hearing and it cannot now be said that the defendants are taken by surprise.

Let me recount the facts as briefly as possible. The plaintiff and defendants were at one time members of the Kampong Pandan Branch of the Malaysian Indian Congress (hereinafter referred to as "the local branch"). As such, the rules of the constitution of the Congress bind them in contract and whatever rights or liabilities they may possess must therefore flow from the said rules (see *Tharmalingam* v. *Sambanthan*).(2) The annual general meeting which was held on May 31, 1964 was frustrated by some rowdy elements and it thus became necessary for the State branch of the Congress to take over the responsibilities of the local branch. However, no action was taken by the State branch as required under the rules to collect membership subscriptions or to hold the annual general meeting until 1967. The local branch therefore became defunct although technically it had been established and was in existence. Now, with the coming into force of the Societies Act, 1966, on February 1, 1966, such branch is deemed to be an unlawful society unless the parent body applies to the registrar in writing for his approval within six months from the commencement of the Act or such extended period as may be allowed by him, in any case not exceeding three months (see proviso to section 12(3)). This the parent body had failed to do and consequently the local branch is an unlawful society within the meaning of the Act. That was the position on October 15, 1967 on which date the local branch purported to hold its annual general meeting at which the defen-